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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

INTERNATIONAL LONGSHORE
AND WAREHOUSE UNION,

Debtor.

Case No. 23-30662-HLB

Chapter 11

**DECLARATION OF WILLIAM E. ADAMS
IN SUPPORT OF FIRST DAY MOTIONS**

I, William E. Adams, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am the President of the above-captioned debtor and debtor in possession (the “Debtor” or “ILWU”). I was elected President in October 2018 and re-elected in October 2021. Prior to being elected President, I served as the Secretary-Treasurer of the ILWU for five terms from 2003 to 2018. I began my career as a longshore worker at the Port of Tacoma in Washington in 1978 and became a full member of ILWU Local 23 in 1986. In 1998, I became a member of Local 23’s executive board.

2. As President, I am the executive officer of the ILWU and responsible for the day-to-day operations, business, and financial affairs of the ILWU. I am familiar with the ILWU’s operations and books and records, which are maintained in the ordinary course of business by the Secretary-Treasurer. Except as otherwise indicated, all facts set forth in this declaration are based on (a) my personal knowledge of the Debtor’s employees, operations, and finances; (b) information learned from my review of relevant documents; (c) information supplied to me by other members of the Debtor’s

1 management team and its advisors; or (d) my opinion based on my experience, knowledge, and
2 information concerning the Debtor's operations and financial condition.

3 3. I am over the age of 18 and am authorized to submit this declaration on behalf of the
4 Debtor. If called upon, I could and would testify competently to the facts set forth herein.

5 4. I submit this declaration in accordance with (a) the United States Bankruptcy Court for
6 the Northern District of California's *First Day Motion Guidelines for Chapter 11 Cases* and (b) Rule
7 9013-1(d) of the Bankruptcy Local Rules for the Northern District of California (the "Local Rules").
8 This declaration is intended to provide (a) an overview of the Debtor, its business, and the events
9 precipitating the commencement of the Debtor's chapter 11 case (the "Chapter 11 Case") and (b)
10 evidentiary support for the Debtor's first day motion filed contemporaneously herewith.

11 5. On September 30, 2023 (the "Petition Date"), the Debtor filed a voluntary petition
12 under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States
13 Bankruptcy Court for the Northern District of California (San Francisco Division) (the "Bankruptcy
14 Court"). The Debtor commenced its Chapter 11 Case to effectuate a reorganization of its capital
15 structure under subchapter V of the Bankruptcy Code.

16 6. In order to minimize operational disruptions in connection with its transition into
17 bankruptcy, the Debtor has filed (a) a motion to maintain its cash management system in the ordinary
18 course of business and (b) a motion to continue honoring its employee and payroll obligations in the
19 ordinary course of business (together, the "First Day Motions"). I am familiar with each First Day
20 Motion and believe that the relief requested in each is necessary to enable the Debtor to operate in
21 chapter 11 with minimal disruption and is critical to enable the Debtor to continue to operate in the
22 ordinary course of business. Accordingly, granting each First Day Motion is in the best interest of the
23 Debtor's estate and its creditors. The facts set forth in each First Day Motion are incorporated herein
24 by reference.

25 7. This declaration is organized into four (4) sections: (a) Section 1 provides background
26 information about the Debtor; (b) Section 2 describes the events leading up to the filing of this Chapter
27 11 Case; (c) Section 3 generally describes the Debtor's plan of reorganization, to be filed shortly after
28

1 the First Day Motions, and (d) Section 4 sets forth the relevant facts in support of each First Day
2 Motion.

3 **SECTION I**

4 **BACKGROUND INFORMATION**

5 **A. History and Objectives**

6 8. The ILWU is organized under the laws of the State of California as a non-profit labor
7 organization that is exempt from federal income tax under section 501(c)(5) of the Internal Revenue
8 Code. The ILWU was formed in 1937 and adopted its *Constitution*, which is its governing document,
9 in 1938. The Constitution has been amended throughout the years by the International Convention,
10 the ILWU's highest governing body, with the latest version dated as of June 2021 (the "Constitution").

11 9. The Constitution sets forth the following objectives of the ILWU:

- 12 i. First, to unite in one organization, regardless of religion, race, creed, color, gender,
13 sexual orientation, political affiliation or nationality, all workers within the
jurisdiction of this International.
- 14 ii. Second, to maintain and improve the wages, hours and working conditions of all
15 its members without discrimination.
- 16 iii. Third, to educate the membership of the organization in the history of the American
17 labor movement and in present day labor problems and tactics.
- 18 iv. Fourth, to secure legislation in the interests of labor and to oppose anti-labor
legislation.

19 10. Since its formation in 1937, the ILWU has grown to approximately 40,000 diverse
20 members in over 50 locals and affiliates throughout California, Washington, Oregon, Alaska, Hawaii,
21 and Canada. The local and affiliate unions are separate legal autonomous entities and are not debtors
22 (or otherwise involved) in this Chapter 11 Case.

23 11. The ILWU's members include workers employed in, among other industries, the (a)
24 loading and unloading of vessels, rail, and trucks at ports; (b) warehousing, wholesaling, and
25 distribution industries (including mining); (c) operation of tugs, towboats, barges, and ferries; (d)
26 agriculture and aquaculture (including processing, transportation, and distribution) industries; (e)
27 tourist industry (including hotels, resorts, and restaurants); (f) wholesale and retail trade, general
28 manufacturing, and food processing; and (g) service industries (including hospitals and health care

1 facilities, financial and insurance operations, newspapers, restaurants, breweries, early childhood
2 education, etc.).

3 12. The ILWU facilitates the organization of local unions and affiliates and assists them
4 with the negotiation and administration of collective bargaining agreements. In furtherance of its
5 objectives, the ILWU also provides (a) a monthly newspaper and other communications to its
6 membership, (b) education and training to its membership, locals, and affiliates, (c) lobbies in the
7 furtherance of the ILWU values and for the benefit of the locals and affiliates, and (d) engages in
8 organizing activities to introduce workers to local unions and affiliates.

9 **B. Governance**

10 13. The highest governing body of the ILWU is the International Convention (the
11 “Convention”), which meets every three (3) years and is composed of delegates elected by direct rank-
12 and-file votes in each local union or affiliate. The Convention adopts resolutions and statements of
13 policy on political, economic, and other issues and amends the Constitution when and where
14 appropriate. The Titled Officers (defined below) and International Executive Board Members (23
15 individuals) are nominated at the Convention and elected later in direct rank-and-file vote by secret
16 ballot.

17 14. The International Executive Board meets at least three (3) times a year and is the
18 highest governing body of the ILWU when Conventions are not in session. The International
19 Executive Board takes all actions necessary to implement the Constitution and Convention decisions.
20 The International Executive Board has a standing committee of four (4) trustees (the “Trustees”),
21 elected by the International Executive Board from among its members. The Trustees examine and
22 check the books and finances, review financial statements, and make recommendations to the
23 International Executive Board.

24 15. The ILWU is managed by the President (myself); three (3) other Titled Officers (Robert
25 Olvera, Jr., Vice President, Mainland; Paul (Sam) Kreutz, Vice President, Hawaii; and Edwin R.
26 Ferris, Secretary-Treasurer); and the International Executive Board.

1 **C. Employees**

2 16. The ILWU has approximately 25 employees that consist of the Titled Officers, field
3 staff, professional staff, and clerical staff. Their functions include (a) conducting and supporting the
4 day-to-day operations of the ILWU; (b) providing support and education to local union leadership and
5 the membership; (c) facilitating communications with and among the local unions and membership;
6 (d) performing organizing activities; (e) implementing the ILWU's policies and programs; (f)
7 maintaining the ILWU's finances; (g) lobbying activities on the local, state, and national level to
8 support the ILWU's objectives; and (h) human resources and legal support.

9 **D. Capital Structure**

10 17. The ILWU's only material asset is its cash on hand, generated by per capita payments
11 by local unions and affiliates, which as of the Petition Date is approximately \$9.5 million.

12 18. In general, the ILWU's locals and affiliates pay per capita to the ILWU on a monthly
13 basis. The per capita paid by a local union or affiliate is based on (a) the number of members the local
14 union or affiliate had that month and (b) each member's hourly rate of pay.

15 19. The ILWU also derives *de minimis* revenue from other sources, including interest on
16 its cash and intellectual property licensing fees related to a credit card program.

17 20. The ILWU's expenses primarily relate to its operation (administering the Constitution
18 and the procedures and processes set forth therein), program services (support to locals, education,
19 organizing, and conventions and other meetings), and administrative support services. A true and
20 correct copy of the Debtor's most recent (a) balance sheet, (b) income statement, (c) cash flow
21 statement, and (f) federal income tax return is attached to the petition.

22 21. As reflected in the foregoing, the Debtor does not have any secured debt. Moreover,
23 the Debtor believes it is current on its accounts payable and the only material claim against it arises
24 from the *pending* ICTSI Litigation (defined below).

25 **SECTION II**

26 **EVENTS LEADING TO THE BANKRUPTCY**

27 22. Historically, the Debtor has been a financially sound and stable organization, primarily
28 funded, as discussed above, by per capita payments from local unions and affiliates. However, in 2012,

1 ICTSI Oregon, Inc. (“ICTSI”) sued the Debtor and International and Longshore Warehouse Union
2 Local 8 (Portland, Oregon) (“Local 8”) in the U.S. District Court, District of Oregon (the “ICTSI
3 Litigation”) for alleged unlawful labor practices, including work stoppages and slowdowns at the Port
4 of Portland terminal. The ICTSI Litigation is captioned *ICTSI Oregon, Inc. v. International Longshore*
5 *and Warehouse Union*, Case No. 3:12-cv-1058-SI.

6 23. In November 2019, a jury trial verdict was reached against the Debtor, finding the
7 Debtor and Local 8 had caused damages to ICTSI of approximately \$94 million. The jury concluded
8 that 55% of those damages were the responsibility of the Debtor and 45% were the responsibility of
9 Local 8. The court, however, granted the Debtor’s request to delay entry of the judgment pending
10 resolution of their post-trial motions, including a renewed motion for judgment as a matter of law and
11 a motion for a new trial.

12 24. On March 5, 2020, the court found the maximum damages supported by the evidence
13 was \$19,061,248, and ordered ICTSI to decide by March 19, 2020, whether it would accept that
14 reduced amount or proceed with a new trial.

15 25. On April 1, 2020, ***after ICTSI rejected the reduced damages amount***, the Debtor
16 requested the court to (1) stay the case and permit the Debtor to appeal the court’s denial of its motion
17 for judgment as a matter of law and (2) reconsider its decision to limit the new trial to damages.

18 26. In May 2020, the court denied the Debtor’s motion to reconsider but granted the Debtor
19 leave to seek an interlocutory appeal of the court’s denial of its motion for judgment as a matter of
20 law.

21 27. In September 2020, the Ninth Circuit Court of Appeals (the “Ninth Circuit”) granted
22 the Debtor’s petition to file an interlocutory appeal and granted ICTSI’s cross-petition to file its own
23 interlocutory appeal.

24 28. On January 18, 2022, the Ninth Circuit dismissed both appeals for lack of jurisdiction,
25 and ***a new trial on damages was scheduled***. The trial is scheduled for late February 2024.

26 29. The ICTSI Litigation has been lengthy and contentious. The Debtor estimates that it
27 will need to incur more than \$8.5 million in ***additional*** legal fees and related expenses through the
28 conclusion of the new damages trial and any related appeals. The Debtor simply cannot sustain the

1 cost of litigation related to the new trial. Moreover, in light of the previous trial, any damages awarded
2 to ICTSI will likely exceed any cash reserves the Debtor may have after trial and the ILWU will not
3 be able to provide vital services to its members. For example, as recently as September 29, 2023, the
4 ICTSI has asserted damages between \$48 million and \$142 million in connection with the ICTSI
5 Litigation. As a result, the Debtor has decided to commence this Chapter 11 Case to immediately
6 address the ICTSI Litigation and associated liability and emerge as a stronger labor organization, to
7 the benefit of the ILWU's 40,000+ members.

8 SECTION III

9 **CHAPTER 11 PLAN OF REORGANIZATION**

10 30. On October 2, 2023, the Debtor filed its *Plan of Reorganization for Small Business*
11 *Under Chapter 11* (the "Plan"). Pursuant to the Plan, the Debtor proposes to pay ICTSI on account of
12 the ICTSI Litigation and any associated claims, substantially all of its cash on hand (the "GUC Fund"),
13 except for a reserve for working capital necessary to enable the ILWU to maintain its operations and
14 rebuild.

15 31. As set forth more fully in the Plan, the Debtor's projected disposable income for the
16 next 5-years is *less than* the GUC Fund. In addition, the GUC Fund is *more than* the liquidation value
17 of the Debtor. Accordingly, I understand that, pursuant to the Plan, ICTSI will receive more than it is
18 otherwise entitled to under the Bankruptcy Code – which should pave the way for an expedited exit
19 from bankruptcy.

20 SECTION IV

21 **FIRST DAY MOTIONS**

22 32. As discussed above, concurrently with the filing of this declaration, the Debtor filed
23 the First Day Motions, which seek the entry of orders that grant various forms of relief intended to
24 stabilize the Debtor's business operations and facilitate a smooth transition into bankruptcy.
25 Specifically, on the Petition Date, the Debtor filed the following First Day Motions:

- 26 i. **Cash Management Motion.** *Debtor's Emergency Motion for Entry of Interim*
27 *and Final Orders Authorizing the Debtors to (A) Continue Operating Cash*
28 *Management System, (B) Honor Certain Prepetition Obligations Related*
Thereto, (C) Maintain Existing Business Forms, and (D) Granting Related
Relief.

1 ii. **Employee Wage and Benefits Motion.** *Debtor's Emergency First Day*
2 *Motion for Interim and Final Orders Authorizing Debtor to Honor Prepetition*
3 *Obligations to Employees.*

4 33. The First Day Motions request authority to pay certain prepetition claims. I understand
5 that Federal Rule of Bankruptcy Procedure 6003 provides, in relevant part, that the Bankruptcy Court
6 shall not consider motions to pay prepetition claims during the first twenty-one (21) days following
7 the filing of a chapter 11 petition, "except to the extent relief is necessary to avoid immediate and
8 irreparable harm." In light of this requirement, the Debtor has narrowly tailored its requests for
9 immediate authority to pay certain prepetition claims to those circumstances where the failure to pay
10 such claims would cause immediate and irreparable harm to the Debtor and its estate.

11 34. I am familiar with the information contained in each First Day Motion and believe that
12 the relief sought in each such motion (a) is necessary to the uninterrupted going concern operations of
13 the Debtor and (b) best serves the Debtor's estate and its creditors' interests.

14 *[Remainder of page intentionally left blank]*
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1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my
2 knowledge and after reasonable inquiry, the foregoing is true and correct.

3 Dated: September 30, 2023
4 San Francisco, California


5 William E. Adams, President